# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** HON. DAVID BENJAMIN COHEN **PART** IAS MOTION 58EFM

*Justice*

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**INDEX NO.** 650278/2017

GOLDBERG WEPRIN FINKEL GOLDSTEIN LLP

**MOTION DATE** 07/24/2017

Plaintiff,

**MOTION SEQ. NO.** 001

- v -

CHARLES FEIT,

Defendant.

**DECISION AND ORDER**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is

Plaintiff's motion for summary judgment is granted. The following facts are not in dispute. Plaintiff law firm performed legal services in connection with a project involving the acquisition of 1040 Home Street (the "Project"). When the project commenced, a retainer letter was signed on or about May1, 2014 by defendant Charles Feit. Although the letter was addressed to Charler Feit, Chief Executive Officer OnForce Solar Inc., the project was not on behalf of OnForce, nor was OnForce the client. Indeed, the letter was signed only by Charles Feit and not by Charles Feit – CEO, and the letter states that the retainer is between "you" and the law firm and services were rendered to "you." Nowhere does the retainer letter refer to OnForce as the client, nor the entity that was eventually formed for the Project, 1040 Home Street LLC. According to defendant, 1040 Home Street LLC was formed on April 24, 2014, which is prior to the date of the retainer letter. The retainer letter stated that only upon closing of the transaction will an invoice be sent, although it did offer more frequent statements if requested. The Project was not

successful and on November 6, 2015, defendant sent plaintiff an email that the Project was not going forward. Shortly thereafter, on January 18, 2016, plaintiff sent defendant an invoice for the work performed on the Project. The invoice was in "block bill" form and provided a detailed and long description of the work performed by plaintiff and the total amount owed for legal fees and expenses of $61,000. Despite not containing a detailed breakdown of the amount of hours worked and statement of which attorney performed which work defendant did not contest. Defendant acknowledges that plaintiff provided the bill and does not dispute the fact that he never contacted defendant to discuss or dispute any portion of the bill. Even in his affidavit in opposition to the current motion, defendant does not explicitly dispute the total and only states that he does "not believe that plaintiff in fact provided $61,000 worth of legal services." Upon defendant's failure to pay the invoice, plaintiff commenced the instant action and alleged (1) breach of contract; (2) *quantum meruit*; and (3) account stated. In the instant motion, plaintiff moved for summary judgment on the breach of contract and account stated causes of action.

Summary judgment is a drastic remedy that should not be granted where there exists a triable issue of fact (*Integrated Logistics Consultants v Fidata Corp.*, 131 AD2d 338 [1st Dept 1987]; *Ratner v Elovitz*, 198 AD2d 184 [1st Dept 1993]). On a summary judgment motion, the court must view all evidence in a light most favorable to the non-moving party (*Rodriguez v Parkchester South Condominium Inc.*, 178 AD2d 231 [1st Dept 1991]). The moving party must show that as a matter of law it is entitled to judgment (*Alvarez v Prospect Hosp.*, 68 NY2d 320 324 [1986]). The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). After the moving party has demonstrated its *prima facie* entitlement to summary

judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial (*Zuckerman v City of New York*, 49 NY2d 557 [1980]).

Defendant's argument that he is not personally liable for the invoice is unavailing. The retainer was signed by him and not by him as CEO. Similarly, nowhere in the body of the retainer letter was a reference to any other entity and the retainer expressly stated "you" as the party. The fact that the letter was addressed to Charles Feit, CEO of OnForce is of no consequence and does not raise any issue of fact as nowhere in the agreement does it state that OnForce was the client, nor is it argued that OnForce was the client. Since Charles Feit signed the retainer and nothing indicates that it was not in his personal capacity, he is responsible for its terms.

"An account stated has long been defined as an account balanced and rendered, with an assent to the balance express or implied; so that the demand is essentially the same as if a promissory note had been given for the balance" (*Morrison Cohen Singer & Weinstein, LLP v Ackerman*, 280 AD2d 355, 56 [2nd Dept 2001]). To grant summary judgment based on accounts stated, plaintiff's *prima facie* burden is to prove that it sent defendant invoices, and that defendant failed to object to them within a reasonable time (*Interman Indus. Products, Ltd. V R.S.M. Electron Power, Inc.*, 37 NY2d 151 [1975]; *Rockefeller Group, Inc. v Edwards & Hjorth*, 164 AD2d 830 [1st Dept 1990]). Even if defendant did not expressly assent, it would be bound by them as accounts stated unless fraud, mistake or other equitable considerations were shown (*Rosenman Colin Freund Lewis & Cohen v Neuman*, 93 AD2d 745 [1st Dept 1983]). Here, the January 18, 2016 invoice was sent to 1040 Home Street LLC, attention Charles Feit. A plain review of the bill indicates that the LLC entity was mistakenly invoiced and not the individual. As Charles Feit was not invoiced, he cannot be held liable under an account stated theory.

Although plaintiff also submitted a sample follow up monthly statement that was addressed to Charles Feit, those statements simply state the amount owed and would not suffice as proper legal bill as they contain no information other than the dollar amount owed.

However, summary judgment on liability is granted on the breach of contract claim. Under New York law, "[t]he elements of a cause of action for breach of contract are (1) formation of a contract between plaintiff and defendant, (2) performance by plaintiff, (3) defendant's failure to perform, (4) resulting damage" (*Morris v 702 E. Fifth St. HDFC*, 46 AD3d 478 [1st Dept 2007]). As discussed above, a contract was formed between the parties. Plaintiff has established that it performed and defendant acknowledges that plaintiff performed legal services. It is undisputed that defendant has failed to pay resulting in damage. The only question is what are the correct amount of legal services performed. Although plaintiff submitted an affidavit that it worked over 100 hours on the matter, the Court cannot ascertain from the affidavit or the from the invoice the appropriate amount owed. The Court was not provided the information of the hours worked, who performed the work or the hourly rate of said person. Further, block billing does not render the invoiced amounts per se unreasonable (*see 546–552 W. 146th St. LLC v. Arfa,* 99 AD3d 117 [1st Dept. 2012]), and "is common practice among law firms" (*Freidman v Yakov*, 138 AD3d 554, 556 [1st Dept 2016]; *Daniele v Puntillo*, 97 AD3d 512 [1st Dept 2012]).

Accordingly, summary judgment is granted on liability and the matter is referred to a special referee to conduct a hearing on the appropriate amount of legal fees earned by plaintiff in connection with the project which will provide an opportunity to assess the reasonableness of the fees (*J. Remora Maintenance LLC v Efromovich*, 103 AD3d 501 [1st Dept 2013]). It is therefore

ORDERED that the motion for summary judgment is granted in part in that the plaintiff is granted summary judgment on liability on breach of contract claim and denied on the account stated claim; and it is further

ORDERED that an assessment of damages against defendant is directed, and it is further

ORDERED that a copy of this order with notice of entry be served by the movant upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment hereinabove directed; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh)].

12/6/2018
DATE

DAVID BENJAMIN COHEN, J.S.C.

HON. DAVID B. COHEN
J.S.C.

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| CHECK ONE: | | CASE DISPOSED | | | X | NON-FINAL DISPOSITION | |
| | | GRANTED | | DENIED | X | GRANTED IN PART | OTHER |
| APPLICATION: | | SETTLE ORDER | | | | SUBMIT ORDER | |
| CHECK IF APPROPRIATE: | | INCLUDES TRANSFER/REASSIGN | | | | FIDUCIARY APPOINTMENT | REFERENCE |